

Utility Withdrawal from IURC Jurisdiction

OUCS Consumer Fact Sheet

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Utility Regulation in Indiana

Given that it does not make economic or practical sense to have more than one set of wires or pipes for the delivery of electric, natural gas, telephone or water and sewer services to homes and businesses, these services have traditionally been provided by utilities with exclusive authority to serve customers in a specific territory. As these monopoly utilities have no competitor(s) for their specific services, a public body traditionally regulates utilities to ensure that customers are treated fairly.

The Indiana Utility Regulatory Commission (IURC) is the state agency that performs this function. The IURC acts much like a judge and is required by law to make decisions that balance the interests of all parties to ensure that utilities provide adequate and reliable service at reasonable prices. The Commission regulates utility rates, quality of service and service territories.

The Indiana Office of Utility Consumer Counselor (OUCC) is the state agency that represents the interests of utility consumers. We act as an attorney and technical expert on behalf of all consumers and the general public in proceedings before the IURC as well as federal regulatory agencies and in the creation of utility policy.

Under Indiana law, the IURC does not regulate municipal sewer utilities, regional water and sewer districts, sewer service provided by conservancy districts and the rules and regulations of water utilities operated by municipalities and conservancy districts. Also, the IURC does not regulate cable television services or most aspects of cellular telephone service.

Indiana Law and Utility "Opt-Outs"

The Indiana Code is available on the Internet at www.IN.gov/legislative/ic_iac and at local libraries.

Small Telephone Company Opt Out Process
IC 8-1-2-88.5

Local Telephone Cooperative Opt Out Process
IC 8-1-17-22.5

REMC Opt Out Process
IC 8-1-13-18.5

Municipal Electric/Water Opt Out Process
IC 8-1.5-3-9 and/or IC 8-1.5-3-9.1

Municipal Water Rates if Opted Out
IC 8-1.5-3-8.2

Not-for-profit and small for-profit
Water / Sewer Opt Out Process
IC 8-1-2.7

Withdrawal from IURC Jurisdiction

Indiana law also allows certain utilities to remove themselves - or "opt out" - from IURC jurisdiction. These include: municipal electric and water utilities; utilities operated by not-for-profit corporations; cooperative telephone and electric companies; privately owned water and sewer utilities serving fewer than 300 customers; and privately owned telephone companies with fewer than 40,000 access lines. The process for removing a utility from the IURC's jurisdiction is specified by law (see the Indiana Code cites in the box above) and typically involves a vote by an elected body and/or the members of the utility.

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When the statutes are silent on rate setting of utilities that have withdrawn from IURC jurisdiction, then common law applies. The general standard that the court applies is that rates must be "nondiscriminatory, reasonable and just." IN re City of Clinton Water Works Rate Schedule, adopted 9/9/97. 707 N.E.2d 807. In such a situation, customers wanting to contest rates must do so before the utility or the utility's rate setting body, or a state court in the county in which they receive service.

The Indiana Office of Utility Consumer Counselor (OUCC) is the state agency that represents the interests of all utility consumers and the general public in matters related to the provision of utility services. The agency is active in proceedings before regulatory and legal bodies, and committed to giving consumers a voice in the creation of utility service policy.

Advantages and Disadvantages

The following lists provide a general summary of the advantages and disadvantages of withdrawing a utility from IURC jurisdiction:

Advantages

1. Withdrawing from the Commission's jurisdiction puts all responsibility for management of the utility at the local level, closer to the customer.

2. If customers of a municipal or cooperative utility are unhappy with their utility's operations, services or rates, most, if not all, of them can register disapproval at the ballot box and replace sitting members of the council or board.

3. No "regulatory lag" time is involved in a rate increase as there can be at the IURC (if a proposed rate case is contested and litigated before an administrative law judge).

4. It avoids the expense of a fully litigated rate case before the Commission, that would occur if a settlement agreement is not reached. A fully litigated case typically requires expert witness testimony that could include consultants, accountants, engineers and attorneys.

Disadvantages

1. Without IURC oversight, all decisions regarding rates and quality of service are made by the utility's governing board or owners. A customer's only recourse is a court of law where he or she will have the burden of proof to show a violation of the law. As a result, customers who support withdrawing from IURC jurisdiction should be confident that the board or owner(s) will have the knowledge and desire to manage the utility well and to charge fair and reasonable rates. Customers should also be confident that future board members or owners will have those same abilities and desires.

2. The proper operation of a utility is an extremely complicated matter that requires expert knowledge and training. The IURC and the OUCC have technical experts with broad experience on staff to review utility operations and proposed rate adjustments, as well as to provide a second opinion on the recommendations of consultants the utility hires.

3. A utility may not realize the savings promised as a result of withdrawing from IURC jurisdiction. The cost of regulation is sometimes exaggerated and a withdrawn utility may determine that it needs to hire certain consultants to ensure customers are properly charged.

4. Customers of a for-profit utility who do not own the utility's stock have no direct control over the utility's management, as they are not permitted to vote for the board or officers, or otherwise directly influence management decisions.

5. Customers of a withdrawn municipal utility who live outside the municipality's corporate boundaries may be disadvantaged because they are not allowed to vote in the municipality's elections. Those customers have no opportunity to register support or opposition for the local government's operation of the utility at the ballot box.

Regulatory Assistance

The OUCC and the IURC both recognize that reducing the time and cost associated with regulation benefits the utility and its customers. To this end, the OUCC always attempts to negotiate a settlement on an issue before litigating. The OUCC also frequently assists utilities using such simplified filing procedures as the Small Utility Filing procedure and wholesale cost trackers.

Through these procedures, which face the same standards of OUCC and IURC review as traditional filings, utilities can seek rate adjustments without going to the time and expense of traditional rate cases. The Small Utility Filing Procedure, available to many types of utilities that serve fewer than 5,000 customers, allows a utility to save time and money by using standardized forms while requiring less assistance, or none, from an attorney or rate consultant.

Further Information

If you have additional questions or concerns, contact the Indiana Office of Utility Consumer Counselor's consumer services staff toll-free at **1-888-441-2494** or through our Website at [**www.IN.gov/oucc**](http://www.IN.gov/oucc). For more information regarding utilities withdrawn from Indiana Utility Regulatory Commission Jurisdiction, contact the IURC at **1-800-851-4268**.

